

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

LEADERS OF A BEAUTIFUL
STRUGGLE, *et al.*

Plaintiffs,

v.

BALTIMORE POLICE DEPARTMENT,
et al.,

Defendants.

Case No. RDB-20-0929

**CONSENT MOTION TO WITHDRAW WITHOUT PREJUDICE DEFENDANT'S
MOTION TO DISMISS AND JOINT MOTION TO STAY PROCEEDINGS PENDING
DEADLINE FOR FILING PETITION FOR WRIT OF CERTIORARI**

1. On April 9, 2020, Plaintiffs filed a Complaint for Declaratory and Injunctive Relief and a Motion for Temporary Restraining Order and Preliminary Injunction. ECF Nos. 1, 2.
2. On April 15, 2020, Defendants filed a Response in Opposition. ECF No. 30. Plaintiffs replied. ECF No. 31. On April 24, 2020, this Court issued an Order and Memorandum Opinion denying Plaintiffs' motion. ECF Nos. 32, 33.
3. On April 24, 2020, Plaintiffs filed an interlocutory appeal. ECF No. 34.
4. On August 12, 2020 Defendants filed a Motion to Dismiss Plaintiffs' Complaint in this Court, ECF No. 40, which remained open during the pendency of the appeal. ECF No. 42. Plaintiffs' current deadline to respond to the Motion to Dismiss is August 30, 2021. ECF No. 55.
5. Ultimately, on June 24, 2021, the Fourth Circuit, sitting *en banc*, issued an opinion reversing this Court and remanding the case for proceedings consistent with its opinion. Judgment was entered on June 24, 2021. ECF No. 55. The mandate was issued on July 16, 2021. ECF No. 53.
6. In light of the above, with consent of Plaintiffs, Defendants move to withdraw without prejudice ECF No. 40, Motion to Dismiss Complaint.
7. Defendants continue to evaluate internally whether to file a Petition for Writ of Certiorari to the Court of Appeals for the Fourth Circuit.

8. Supreme Court Rule 13 states: “Unless otherwise provided by law, a petition for a writ of certiorari to review a judgment in any case, civil or criminal, entered by a state court of last resort or a United States court of appeals (including the United States Court of Appeals for the Armed Forces) is timely when it is filed with the Clerk of this Court within 90 days after entry of the judgment.”

9. The Supreme Court issued a miscellaneous Order on March 19, 2020 that extended that period to 150 days due to the COVID-19 global pandemic. Order List 589 U.S., available at https://www.supremecourt.gov/orders/courtorders/031920zr_d1o3.pdf (last accessed Aug. 20, 2021).

10. The Supreme Court issued another Order on July 19, 2021 rescinding its early Order; however the July 19 Order specifies that the allowable period remains 150 days for judgments entered prior to July 19, 2021. Order List 594 U.S., available at https://www.supremecourt.gov/orders/courtorders/071921zr_4g15.pdf (last accessed Aug. 20, 2021).

11. Therefore, Defendants have until Monday November 22, 2021 to file a Petition for Writ of Certiorari to the Court of Appeals for the Fourth Circuit.

12. In light of the above, the parties jointly request that the Court issue an Order staying the proceedings—with an exception for proceedings related to the entry of a preliminary injunction in this matter—until December 6, 2021 (two weeks after the deadline for filing a petition has passed), at which time the parties would submit to the Court a Joint Status Report. A stay would conserve the resources of the parties and promote judicial economy.

13. Separately, in light of the Fourth Circuit’s opinion and the issuance of the mandate to this Court, Plaintiffs intend to move for entry of a preliminary injunction in accordance with the Fourth Circuit’s opinion by August 25, 2021. Because Defendants seek to preserve all appellate rights with respect to the entry of a preliminary injunction, they do not intend to join in Plaintiffs’ motion; however, the parties are engaged in good-faith negotiations concerning the scope of the injunction that Plaintiffs intend to move the Court to enter.

WHEREFORE, the parties jointly request that the Court issue an Order:

1. Withdrawing without prejudice Defendants’ Motion to Dismiss (ECF No. 40);
2. Staying the proceedings (other than proceedings related to the entry of a preliminary injunction in accordance with the en banc Fourth Circuit’s opinion) until December 6, 2021; and
3. Directing the parties to file with the Court a Joint Status Report on that date.

Respectfully submitted,

JAMES L. SHEA
Baltimore City Solicitor

/s/

ELISABETH S. WALDEN
Chief, Police Legal Affairs
KARA K. LYNCH (29351)
Baltimore City Department of Law
100 N. Holliday Street, Suite 100
Baltimore, Maryland 21202
T: 410.396.3659
F: 410.659.4077

*Counsel for Baltimore Police Department
and Police Commissioner Michael S.
Harrison*

/s/

DAVID R. ROCAH (Bar No. 27315)
American Civil Liberties Union
Foundation of Maryland
3600 Clipper Mill Road, Suite 350
Baltimore, MD 21211
T: 410.889.8555
F: 410.366.7838
rocah@aclu-md.org

ASHLEY GORSKI*
BRETT MAX KAUFMAN*
NATHAN FREED WESSLER*
BEN WIZNER*
American Civil Liberties
Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004
T: 212.549.2500
F: 212.549.2654
agorski@aclu.org
bkaufman@aclu.org
nwessler@aclu.org
bwizner@aclu.org
* *pro hac vice*

Counsel for Plaintiffs